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10 Attorneys for NCR CORPORATION

11 UNITED STATES DISTRICT COURT  
12 DISTRICT OF NEVADA

13 BETTY BROWN, an individual, )  
14 Plaintiff, ) Case No. CV-N-01-0706-ECR-RAM  
15 vs. )

16 NCR, CORPORATION, a Maryland )  
17 corporation and KMART CORPORATION, )  
a Michigan corporation, )  
18 Defendants. )  
19  
20 NCR CORPORATION, a Maryland )  
21 corporation, )  
22 Counterclaimant, )  
23 vs. )  
24 BETTY BROWN, an individual, )  
25 Counterdefendant. )

ANSWER TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT AND  
COUNTERCLAIM OF DEFENDANT  
NCR CORPORATION

26 NCR Corporation ("NCR") answers the First Amended Complaint of Plaintiff as follows:

27 1. NCR is informed and on that basis admits that Plaintiff is a resident of the State of

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1 Nevada, County of Washoe, City of Reno.

2 2. Admitted.

3 3. NCR lacks information sufficient to form a belief as to the truth or falsity of the  
4 statements made in this paragraph of the First Amended Complaint, and denies them on that  
5 basis.

6 4. Admitted.

7 5. NCR admits that Plaintiff purports to bring an action for patent infringement  
8 against NCR pursuant to 35 U.S.C. §§ 101 et seq. but denies that any infringement by NCR has  
9 occurred, is occurring, or will occur.

10 6. NCR admits that U.S. Patent No. 5,924,079 (the "079 patent") appears on its face  
11 to have issued on July 13, 1999 and appears on its face to have issued to Plaintiff. NCR denies  
12 that the '079 patent was duly and legally issued. NCR lacks information sufficient to form a  
13 belief as to the truth or falsity of the statement that Plaintiff is still the owner of the '079 patent,  
14 and denies it on that basis. The remaining allegations of this paragraph are denied.

15 7. NCR denies that it infringes the claims of the '079 patent. NCR denies that it has  
16 been and will continue to infringe the '079 patent. NCR lacks information sufficient to form a  
17 belief as to the truth or falsity of the balance of the allegations of this paragraph, and denies them  
18 on that basis.

19 8. NCR denies that Plaintiff provided proper notice to NCR and Kmart of her  
20 alleged patent infringement claims. NCR lacks information sufficient to form a belief as to the  
21 truth or falsity of the balance of the allegations of this paragraph, and denies them on that basis.

22 9. Denied.

23 AFFIRMATIVE DEFENSES

24 NCR alleges the following affirmative defenses:

25 **FIRST AFFIRMATIVE DEFENSE**  
26 **(Invalidity of the '079 Patent)**

27 10. The '079 patent is invalid under the provisions of Title 35, United States Code,

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including, *inter alia*, 35 U.S.C. §§ 101, 102, 103, and 112.

## **SECOND AFFIRMATIVE DEFENSE (Non-Infringement of the '079 Patent)**

11. NCR has not, does not, and will not directly infringe, contributorily infringe, actively induce infringement by others, or in any other manner infringe the '079 patent.

## **COUNTERCLAIM**

(Declaration of Non-Infringement and Invalidity of the '079 patent)

NCR alleges the following Counterclaim against Plaintiff:

12. This court has subject matter jurisdiction over this Counterclaim pursuant to 28 U.S.C. §§ 1331 and 1338(a) in combination with 28 U.S.C. §§ 2201 and 2202.

13. This court has personal jurisdiction over Plaintiff with respect to this Counterclaim by virtue, inter alia, of Plaintiff having submitted to the jurisdiction of this court by filing the First Amended Complaint.

14. NCR repeats the allegations contained in paragraphs 1 through 13 of its Answer and Counterclaim as though fully set forth herein.

15. An actual and justiciable controversy exists between NCR and Plaintiff with respect to the non-infringement, invalidity, and scope of the '079 patent. Absent a declaration of non-infringement and invalidity, Plaintiff will continue to wrongfully assert the '079 patent against NCR and will thereby cause NCR irreparable injury and damage.

16. NCR has not, does not, and will not infringe the '079 patent, either directly or in any other manner, and NCR is entitled to a declaration to that effect.

17. The '079 patent was not duly and legally issued and is invalid under 35 U.S.C. §§ 101, 102, 103, and 112, and NCR is entitled to a declaration to that effect.

## PRAYER

**WHEREFORE**, NCR prays for judgment as follows:

A. For dismissal of Plaintiff's First Amended Complaint with prejudice, and that Plaintiff take nothing against NCR by the First Amended Complaint;

B. For a judicial determination and declaration that the '079 patent, and each and every claim thereof, is invalid and not infringed by NCR;

C. For an order of this Court enjoining Plaintiff from suing, or threatening to sue, Kmart or any existing or potential customer or supplier of NCR for infringement of the '079 patent;

D. For a judicial determination, pursuant to 35 U.S.C. § 285, that this case is exceptional and that NCR be awarded its attorneys' fees and costs;

E. For NCR's costs of suit incurred herein; and

F. For such other and further relief as the Court deems just and proper.

DATED this 8 day of April, 2002.

**GUILD, RUSSELL, GALLAGHER  
& FULLER, LTD.**

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Attorneys for NCR CORPORATION

**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I certify that I am an employee of Guild, Russell, Gallagher & Fuller, Ltd., and that on this date I deposited for mailing in the U.S. Mail at Reno, Nevada, postage prepaid, a true and correct copy of the foregoing **ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND COUNTERCLAIM OF DEFENDANT NCR CORPORATION** addressed as follows:

Brian C. Kelly, Esq.  
Hawkins, Folsom, Muir, Kelly & Vallas  
One East Liberty Street, Suite 416  
Reno, NV 89501

DATED this 18<sup>th</sup> day of April, 2002.

Connie Salerno  
Connie Salerno